Supreme Court of the United States

OCTOBER TERM, 1949

No. 403

RUDOLF REIDER,

Petitioner,

versus

GUY A. THOMPSON, Trustee, MISSOURI PACIFIC RAILROAD COMPANY, Debtor,

Respondent.

BRIEF IN BEHALF OF PETITIONER

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DEUTSCH, KERRIGAN & STILES and
MALCOLM W. MONROE,
Of Counsel.

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BRIEF IN BEHALF OF PETITIONER

I

OFFICIAL REPORT OF OPINIONS BELOW

The majority, concurring and dissenting opinions of the judges of the Court of Appeals for the Fifth Circuit were filed July 20, 1949 (Tr 13 et seq.), and are reported at 176 F2d 13 et seq. Rehearing was denied on August 22, 1949 without opinion (Tr 23). No opinion was rendered by the district judge other than a citation of cases in support of his order (Tr 9-10).

II

BASIS OF JURISDICTION

Jurisdiction of this court was invoked by petition for certiorari under *section 1254* of *Title 28* of the *United States Code*. Certiorari was granted on December 5, 1949.

III

STATEMENT OF THE CASE

This suit was brought under the Carmack Amendment to the Interstate Commerce Act,[1] for damage to a shipment of skins and wool. The complaint alleges that the carrier received the consignment in good order and condition at New Orleans, Louisiana, issuing its through bill of lading for carriage of the goods by its own and specified connecting lines to Boston, Massachusetts; that upon arrival at Boston, the shipment was found to have been damaged.[2]

The bill of lading recites that the goods were received by the railroad at New Orleans from "H. P. Lambert Co. Inc. X SS 'Rio Parana' ", consigned in bond to the Collector of Customs at Boston for H. P. Lambert Co., Inc.[3]

A prior ocean bill of lading[4] covering the same goods had named Emilio Rosler S. R. L. as the shipper, Buenos Aires as the port of shipment, and New Orleans as the port of discharge. The space provided in the ocean bill

[1] 34 Stat. 593, 49 USC 20(11).
[2] Tr 2-3.
[3] Tr 4-5.
[4] Tr 7-9.

for an ultimate destination of the goods in event of shipment beyond the port of destination was left blank. The consignee was designated in these words: "Shipped to the order of: The First National Bank of Boston; Notice of arrival should be addressed to (if consigned to Shipper's Order) Rudolf Reider 29 South Street Boston, Mass. U. S. A." The stated ocean freight was payable at Buenos Aires.

Respondent filed a motion to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted,[5] his contention being that this was a "foreign shipment", having originated in a foreign country, and was, therefore, not subject to the provisions of the Carmack Amendment as to the rail carriage from New Orleans to Boston.

The district court sustained the motion and dismissed the action.[6] Petitioner appealed from this decree,[7] and on July 20, 1949, the Court of Appeals for the Fifth Circuit (McCord, J.) affirmed the decree, Judge Hutcheson concurring and Judge Sibley dissenting, each judge handing down a separate opinion.[8]

Judge McCord held that the Carmack Amendment does not apply to an interstate shipment within the United States if the goods originated in a foreign country, the domestic bill of lading being merely supplemental to what is in effect a through foreign shipment, even though the

[5] Tr 5.
[6] Tr 9-10.
[7] Tr 10-12.
[8] Tr 13-21.

foreign bill of lading designated the United States port of entry as the destination of the goods.[9]

Judge Hutcheson, "at long last, but not without some slight misgivings, ranged" himself "with (Judge) McCord". He conceded that the instant case falls within the strict letter of the Carmack Amendment, but relied on decisions which hold that shipments moving in the United States under through bills of lading issued in foreign countries where the shipments originated are governed neither by the Carmack Amendment nor the Federal Bills of Lading Act.[10]

Judge Sibley dissented because "the plain, unambiguous words of Section 20(11) of the Interstate Commerce Act as amended . . . uphold this suit"; the railroad being a carrier subject to the Act, "which received this property at New Orleans, a point within a state for transportation to Boston, a point in another state, . . . issued its receipt or bill of lading as it was bound to do, and incurred liability for any damage to such property caused by it or any other common carrier to which it delivered the property on the way to Boston, the destination named in its bill of lading".[11]

He called attention to the fact that the ocean carrier had not issued a through bill of lading to Boston, that there was no privity between the ship and the railroad, and that the contract of rail carriage was new, separate and distinct from that for the ocean carriage.[12]

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[9] Tr 14-16.
[10] Tr 16-17.
[11] Tr 17-18.
[12] Tr 18-19.

IV

SPECIFICATION OF ERRORS

The court erred in holding that a domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is not subject to the provisions of the Carmack Amendment to the Interstate Commerce Act as to damage to the consignment sustained on its own or connecting rail lines, when the shipment originated in a foreign country under an ocean bill of lading designating the United States port as the destination of the goods.

V

ARGUMENT

POINT A

> When goods arrive from a foreign country at a port in the United States to which they are consigned, and from which they are shipped to a point in a different state under a domestic through bill of lading, the latter is separate and distinct from, and not supplemental to, the foreign ocean bill of lading under which the goods arrived in the United States.

The goods in question were transported by an ocean carrier from Buenos Aires, Argentina, to the port of New Orleans where they were delivered in accordance with the ocean bill of lading which designated that port as

the destination of the goods.[1] The domestic carrier subsequently received the property from a new shipper, and issued its through bill of lading[2] for carriage of the goods from New Orleans to Boston, over its own and specified connecting rail lines.

The ocean bill of lading was not a through bill of lading to Boston. The port of New Orleans was the terminal point of the carriage under that bill. It contained no provision whatever for the domestic carriage. The space provided in the ocean bill of lading for designation of an ultimate destination in the event of shipment beyond the port of discharge was left blank. The ocean freight was made payable at Buenos Aires and the rail rates were not stated in the bill.

The fact that the ocean bill of lading named the First National Bank of Boston as consignee of the goods with notice of arrival to be given to Rudolf Reider in Boston, certainly does not have the effect of making the shipment a through one to that city. The ocean carrier was obligated only to deliver at New Orleans to order of the party named.

The duties and obligations of the carrier came to an end upon such delivery at the port of New Orleans. Had the owner of the cargo so desired, the shipment could have terminated at New Orleans; and having decided to transport the property to another point, he necessarily had to enter into a new contract of carriage with another carrier. Had not the domestic carrier issued its own bill of lading,

[1] Tr 7-9.
[2] Tr 4-5.

the shipment could not have proceeded beyond New Orleans.

The issuance of the domestic through bill of lading, therefore, constituted a new and independent undertaking on the part of the rail carrier, having no relation whatever to the origin or prior movement of the goods.

POINT B

A domestic rail carrier which issues its own separate, independent, through bill of lading for carriage of property from a United States port to a point in another state, is subject to the Carmack Amendment to the Interstate Commerce Act, even though the goods originated in a foreign country.

The Carmack Amendment does not except a carrier from its provisions merely because the goods it transports began their movement in a foreign country. It may well be that a domestic carrier transporting a shipment to an interior point within the United States under a through bill of lading issued by a prior carrier in a foreign country, designating the interior point within the United States as the destination of the goods, is not governed by the Amendment.

The case of *Alwine vs Pennsylvania R. Co.*[3] so holds, but that is all it holds. That it does not decide the question presented here, as contended by the majority of the Court of Appeals, is apparent from the fact that the

[3] 141 Pa. Super. 558.

Pennsylvania court emphasized that it had a *"through* bill of lading" before it for consideration, itself italicizing the word *"through"*.

Nor does any provision of the Carmack Amendment exempt a carrier from its provisions even if a shipment is "intended" for uninterrupted transportation from a point without, to a point within, the United States. It is not the character of the shipment but the character of the contracts of carriage, which governs applicability of the statute.

It may be conceded that under the decisions of *United States vs Erie R. Co.*[4] and *Texas & New Orleans R. R. Co. vs Sabine Tram Co.*[5] relied on by the majority of the court, and other similar cases,[6] the issuance of the bill of lading by the domestic carrier did not affect the "continuity of foreign character" of the shipment, subjecting it to the exclusive right of Congress to regulate it or levy taxes thereon. Nevertheless, the issuance of the new, independent, domestic, bill of lading brought the duties and liabilities imposed by the Carmack Amendment into immediate play. Not one of the cited cases involved the interpretation or applicability of the Carmack Amendment.

The appropriate test here is not different from that universally applied to ordinary interstate shipments to determine whether a carrier which transports, under its own bill of lading, property received from a prior carrier, is an

[4] 280 US 98.
[5] 227 US 111.
[6] Railroad Commission of Louisiana vs Texas & Pacific Railway Company, 229 US 336; Illinois Central Railroad Company vs DeFuentes, 236 US 157; Western Oil Refining Company vs Lipscomb, 244 US 346.

initial, or merely a connecting, carrier. The rule has been established firmly that when all of the obligations of a previous contract of carriage of property have terminated, the carrier transporting the property under its own, new and distinct, bill of lading is the receiving carrier within the meanng of the statute.[7]

The cases[8] relied on by respondent and the majority of the Court of Appeals, as support for the contention that the shipment in question, having had its origin in a foreign country, could not have become subject to the Carmack Amendment to the Interstate Commerce Act, do not so hold. As was recognized by the dissenting judge,[9] these cases relate to shipments moving out of the United States under through bills of lading.

The concurring judge in the court below,[10] erroneously relied on the Federal Bills of Lading Act[11] by way of analogy, in support of his position that the Carmack Amendment is inapplicable to all shipments originating in foreign countries. True, a bill of lading issued in a foreign country is not governed by the Federal Bills of Lading Act, because it is considered to be a contract subject to the laws of the country in which it was made.[12]

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[7] Rice vs Oregon Short Line R. Co., 33 Idaho 565; Baltimore & O. R. Co. vs Montgomery & Co., 19 Ga. App. 29; Barrett vs Northern Pac. Ry. Co., 29 Idaho 139.

[8] Missouri Pac. R. Co. vs Porter, 273 US 341; J. H. Hamlen & Sons Co. vs Illinois Cent. R. Co., 212 Fed. 324 (ED Ark.); Best vs Great Northern Ry. Co., 159 Wis. 429; Chicago, M. & St. P. Ry. Co. vs Jewett, 169 Wis. 102.

[9] Tr 19.

[10] Tr 17.

[11] 39 Stat. 538, 49 USC 81.

[12] Chesapeake & O. R. Co. vs State Nat. Bank of Maysville, 280 Ky. 444; Williston on Contracts, Vol. IV, Sec. 1116, p. 3194.

But that the rail bill of lading involved in this action was issued in the United States, and is unquestionably controlled by, and subject to, the Federal Bills of Lading Act, was recognized by the concurring judge in the very next paragraph of his opinion.[13]

In *Mexican Light & Power Co., Limited vs Texas Mexican Ry. Co.*,[14] cited by the majority of the Court of Appeals, the original bill of lading provided for carriage of the goods from Pennsylvania to the international boundary, and obligated the Texas Mexican Railway, as the terminal carrier, to convey the goods under the original bill of lading to that point. On receipt of the goods in Texas, the terminal carrier issued its own bill of lading beyond the boundary. An action was instituted under the Carmack Amendment against that terminal carrier, as the initial carrier, issuer of the bill of lading for transit into Mexico where the goods were damaged.

This court held that the Texas Mexican Railway could act only as terminal carrier to the boundary under the original bill of lading; that it was without authority as such to issue a new bill of lading beyond its terminus; that such new bill of lading was accordingly void; and that the carrier could therefore not be treated as a receiving or initial one.

The cited case clearly has no bearing on the point at issue in the case at bar, except in so far as it stands for the proposition that termination of carriage under one bill of

[13] Tr 17.
[14] 331 US 731.

lading, and commencement of new and independent carriage under another, as shown by the bills themselves, are the factors determinative of the legal effect of the bills.

In the case at bar, the domestic carrier was not an intervening or connecting carrier, as stated in the majority opinion with the suggestion that this action "attempts to hold that carrier responsible for damage that may have been caused by the foreign carrier". This statement is refuted by both the concurring and dissenting judges.[15] They pointed out that under the applicable Federal Bills of Lading Act,[16] plaintiff had the burden of proving good condition at New Orleans so that application of the Carmack Amendment "cannot give rise to the hardship suggested of making the domestic carriers subject to the Act responsible for the fault of an importing foreign vessel."[17]

In fine, the test of the applicability of the Carmack Amendment to a domestic carrier transporting such a shipment, is not whether the shipment originated in a foreign country, or was intended for uninterrupted transportation to a point within the United States, but whether the transportation under the foreign bill of lading terminated at the United States port, and whether the domestic carrier transported the goods under its own separate, independent, contract of carriage.

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[15] Tr 17, 20.
[16] 39 Stat. 538, 49 USC 81.
[17] Tr 20.

As has been shown, although the instant shipment had its origin in a foreign country, the domestic carrier transported the goods under its own separate, independent, contract of carriage. The carrier accordingly falls within the unequivocal provisions of the Act, for it is one "receiving property for transportation from a point in one State . . . to a point in another State". In the words of the dissenting judge of the Court of Appeals: "This case falls within the words Congress used." [18]

CONCLUSION

It is accordingly respectfully submitted that the decision of the Court of Appeals for the Fifth Circuit should be reversed, and the case remanded for trial on its merits.

Respectfully submitted,

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New Orleans,
January, 1950.

This is to certify that copies of this brief have been served on opposing counsel on January .., 1950.

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[18] Tr 20.

APPENDIX

The Carmack Amendment to the Interstate Commerce Act, 49 USC 20(11).

Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder

of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void. . .